

§ 1.909-1T

26 CFR Ch. I (4-1-12 Edition)

§ 1.909-1T Definitions and special rules (temporary).

(a) *Definitions.* For purposes of section 909, this section, and §§1.909-2T through -5T, the following definitions apply:

(1) The term *section 902 corporation* means any foreign corporation with respect to which one or more domestic corporations meet the ownership requirements of section 902(a) or (b).

(2) The term *section 902 shareholder* means any domestic corporation that meets the ownership requirements of section 902(a) or (b) with respect to a section 902 corporation.

(3) The term *payor* means a person that pays or accrues a foreign income tax within the meaning of §1.901-2(f), and also includes a person that takes foreign income taxes paid or accrued by a partnership, S corporation, estate or trust into account pursuant to section 702(a)(6), section 901(b)(5) or section 1373(a).

(4) The term *covered person* means, with respect to a payor—

(i) Any entity in which the payor holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value);

(ii) Any person that holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value) in the payor; or

(iii) Any person that bears a relationship that is described in section 267(b) or 707(b) to the payor.

(5) The term *foreign income tax* means any income, war profits, or excess profits tax paid or accrued to any foreign country or to any possession of the United States. A foreign income tax includes any tax paid in lieu of such a tax within the meaning of section 903.

(6) The term *post-1986 foreign income taxes* has the meaning provided in §1.902-1(a)(8).

(7) The term *post-1986 undistributed earnings* has the meaning provided in §1.902-1(a)(9).

(8) The term *disregarded entity* means an entity that is disregarded as an entity separate from its owner, as provided in §301.7701-2(c)(2)(i).

(9) The term *hybrid partnership* means a partnership that is subject to income tax in a foreign country as a corporation (or otherwise at the entity level)

on the basis of residence, place of incorporation, place of management or similar criteria.

(b) *Taxes paid or accrued by a partnership, S corporation or trust.* Under section 909(c)(1), section 909 applies at the partner level, and similar rules apply in the case of an S corporation or trust. Accordingly, in the case of foreign income taxes paid or accrued by a partnership, S corporation or trust, taxes allocated to one or more partners, shareholders or beneficiaries (as the case may be) will be treated as split taxes to the extent such taxes would be split taxes if the partner, shareholder or beneficiary had paid or accrued the taxes directly on the date such taxes are taken into account by the partner under sections 702 and 706(a), by the shareholder under section 1373(a), or by the beneficiary under section 901(b)(5). Any such split taxes will be suspended in the hands of the partner, shareholder or beneficiary.

(c) *Related income of a partnership, S corporation or trust.* For purposes of determining whether related income is taken into account by a covered person, related income of a partnership, S corporation or trust is considered to be taken into account by the partner, shareholder or beneficiary to whom the related income is allocated.

(d) *Application of section 909 to pre-1987 accumulated profits and pre-1987 foreign income taxes.* Section 909 and §§1.909-1T through -5T will apply to pre-1987 accumulated profits (as defined in §1.902-1(a)(10)(i)) and pre-1987 foreign income taxes (as defined in §1.902-1(a)(10)(iii)) of a section 902 corporation attributable to taxable years beginning on or after January 1, 2012.

(e) *Effective/applicability date.* This section applies to taxable years beginning on or after January 1, 2011.

(f) *Expiration date.* The applicability of this section expires on February 9, 2015.

[T.D. 9577, 77 FR 8136, Feb. 14, 2012]

§ 1.909-2T Splitter arrangements (temporary).

(a) *Foreign tax credit splitting event—*

(1) *In general.* There is a foreign tax credit splitting event with respect to foreign income taxes paid or accrued if